

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“ministry”) dated April 29, 2022, that denied the appellant’s request for a supplement for moving costs.

The ministry determined that:

1. it was not satisfied that the appellant had moved for one of the reasons set out in section 55(2) of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”);
2. it did not have enough information to determine whether the appellant had resources available to cover the moving costs;
3. the appellant did not have prior approval from the minister before incurring the costs;
4. it did not have enough information to determine if the moving costs were the least expensive appropriate moving costs; and
5. some of the expenses claimed were not moving costs.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (“EAPWDA”) section 5
EAPWDR section 55

Part E – Summary of Facts

The hearing took place by teleconference on June 30, 2022. The appellant's representative did not attend the hearing. The appellant chose to go ahead with the hearing without their representative present. The appellant's spouse attended as a support person.

Evidence before the Ministry at Reconsideration:

The appellant is a recipient of benefits under the EAPWDA.

On March 10, 2022, the appellant submitted a request for a supplement to cover the costs of moving to suite #1 on the main floor of their building. According to ministry records, the appellant and their spouse lived in suite #2 on the main floor. However, in an undated letter that was part of the request for the moving supplement, the appellant advised the ministry that they were moving to suite #1 from a 3rd floor suite. Their rent would be the same.

The appellant advised the ministry that they needed to move to the main floor for medical and safety reasons, and because of an infestation of bedbugs and cockroaches, such that a visiting nurse had to wear protective coveralls to come into the suite. As well, the appellant said that the 3rd floor suite had plumbing problems, the cupboards and sink were rotten, and the appellant was getting sick as a result.

The appellant gave the ministry a handwritten list of names, a brief description of work done in connection with the move, and amounts to be paid to each person, totalling \$1050. The list also included \$250 for cleaning supplies, gas and food, a restaurant receipt for \$45.10 and a gas station receipt for \$10.97.

Additional Evidence:

The appellant and their spouse were originally supposed to move into a main floor suite, but at the last minute the landlord rented that suite to someone else, and they were given a suite on the 3rd floor of the building, which has no elevator. They lived in the 3rd floor suite for about 2 years. On February 1, 2022, their landlord told them that a main floor suite had come available. The appellant accepted the new suite quickly because they did not want to lose it to someone else.

The appellant had been anxious to move out of the 3rd floor suite for several reasons: there was a serious infestation of bedbugs and cockroaches; the landlord had been unable to fix a constant plumbing leak in the bathroom for a long time, which had resulted in mold and damage; and the appellant found it difficult to go up and down the stairs due to their disability. The appellant had a fall on the stairs on February 8, 2022 that left them bruised and barely able to walk. The appellant was also getting sick from the carpets in the 3rd floor suite; main floor suite #1 has hardwood floors.

The nurse who visits the appellant daily was not allowed to visit the suite for a week because of the insect infestation, and when the nurse was allowed to return, they had to wear a full protective coverall because of the bugs.

The appellant and their spouse were to move into the new suite on March 1, 2022, but the suite was available for them to start to move their possessions from February 8 on.

The appellant stated that they have not yet paid any of the people the amounts set out in the handwritten list they gave the ministry. They still owe those amounts to the people involved.

The appellant said that they did not ask for the moving supplement before March 10, 2022, for several reasons: they were busy; they were bruised and their ankle was swollen after their fall on February 8, it was cold; and they did not think it was going to be a problem that they had not told the ministry before they moved.

At the hearing the ministry representative said that the appellant told a worker that they had resources to help them move, and their family would help. The appellant denied that they had told the ministry they had resources to move and stated that they did not have the money to pay the people who helped them move. They calculated the amounts to pay each person at about \$10 an hour, though they know they are probably underpaying people for the work they did. They had to move the contents of a 2 bedroom suite, with a lot of boxes. The restaurant and gas station receipts were for take out food and pop that the appellant bought for the people who helped them move. The appellant estimated that, out of the total of \$1050 for labour, about \$150 (3 people at \$50 each) was spent for cleaning the suite rather than moving possessions.

In answer to a question from the ministry, the appellant said that the landlord did not offer to help with moving costs even though they had to move because of the insect infestation and the condition of the 3rd floor suite.

Admissibility of Additional Evidence:

The ministry did not object to the additional oral evidence of the appellant at the hearing.

The additional evidence provides further information about the appellant's reasons for moving from the 3rd floor suite, the details of the amounts claimed for moving costs and the appellant's reasons for not asking for prior approval. Therefore, the panel determined that the additional evidence is admissible under section 22(4) of the Employment and Assistance Act as it is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry was reasonable in its decision to deny the appellant a moving supplement.

Legislation:

The full text of the legislation is set out in the Schedule attached to this decision.

Appellant's Position:

The appellant says that they had to move out of the 3rd floor suite for medical reasons, because it was dangerous for them to use the stairs and they were getting sick because of the bedbugs, cockroaches and mold. They maintain that those conditions were a danger to their health.

The appellant insists that they did not have resources available to them to move without the moving supplement. The amounts they have agreed to pay their helpers are probably too low. The appellant was unable to do the moving themselves because of their disability.

The appellant says that they had to make a fast decision to take suite #1 before anyone else took it. Their fall on the stairs on February 8, 2022 made the need to move more urgent. They did not have time to give the request for the supplement to the ministry before they moved. They were also sick from the unhealthy conditions in the 3rd floor suite, they could barely move after the fall on the stairs, and it was very cold out at that time of year. The ministry never told the appellant that they had to submit the request for the moving supplement before they moved, and the appellant had not thought it was going to be a problem to submit the request afterwards.

Ministry's Position:

The ministry says that the appellant is not eligible for a moving supplement because:

1. they were not moving for one of the reasons set out in section 55(2) of the EAPWDR;
2. the ministry could not determine if the appellant had resources available to them to cover the moving costs;
3. the appellant did not have approval from the minister before incurring the costs, and there were no exceptional circumstances that would have prevented the appellant from asking for prior approval;
4. the ministry was not satisfied that the moving costs were the least expensive appropriate moving costs, because the appellant had not provided quotes from more than one source for the cost of the move;
5. a supplement for moving costs only covers the cost of moving possessions from one place to another; it does not cover cleaning, or food for workers.

With respect to the issue of available resources, in the reconsideration decision the ministry stated that the appellant had not provided any information to explain how they paid for the costs of the move; at the hearing, the ministry representative insisted that the appellant had told a ministry employee that they had resources available in the form of help from friends and family.

Panel Decision:

The ministry can only provide a supplement for moving costs if the request meets the requirements in section 55 of the EAPWDR. Those requirements are:

1. they must be moving for one of the reasons listed in section 55(2);
2. they must not have resources available to cover the moving costs;
3. they must receive the minister's approval before incurring the costs, unless the minister is satisfied that there are exceptional circumstances that excuse the failure to get prior approval;
4. the supplement can only be provided to help with the least expensive appropriate moving costs.

The ministry is not permitted to provide a supplement for moving costs if the request does not meet these requirements.

Reason for Moving:

Under EAPWDR section 55(2), the ministry may provide a supplement for moving costs if a recipient is moving for one of the following reasons:

- moving anywhere in Canada to begin confirmed employment;
- moving to another province or country to improve their living circumstances;
- if the recipient is compelled to vacate rented accommodation for any reason, including the sale, demolition or condemning of the accommodation;
- to significantly reduce shelter costs;
- to avoid an imminent threat to physical safety;
- in certain circumstances, to attend a child protection or maintenance hearing.

The ministry determined that the appellant was not moving from the 3rd floor suite to suite #1 for any of these reasons.

The appellant describes conditions that they say represent an imminent threat to their physical safety:

1. bedbug and cockroach infestation;
2. flights of stairs from the 3rd floor suite, which were difficult for the appellant to manage, and where they fell on February 8, 2022;
3. damp and mold from a plumbing issue that made them sick.

The panel sympathizes with the appellant's good reasons for moving. However, there is not enough information to show that there was an imminent threat to the appellant's personal safety if they did not move. The panel finds that the ministry was reasonable in determining that the appellant did not have to move because of an imminent threat to their physical safety, or for any of the other reasons listed in section 55(2) of the EAPWDR.

Available Resources:

In its reconsideration decision the ministry stated that it could not determine if the appellant had resources available to them to cover the moving costs because the appellant did not provide any information to explain how they had paid the costs. The ministry assumed that the appellant had already paid the amounts listed in their letter, but at the hearing, the appellant explained that they have not yet paid anyone, and they do not have the money to pay the people themselves.

At the hearing the ministry representative raised a further argument not included in the reconsideration decision. They insisted that the appellant had told a ministry employee that they had family and friends who would help them move, and that those people were “resources available” to the appellant to cover the moving costs. The ministry did not raise that argument in the reconsideration decision, and the panel notes the appellant’s evidence that family and friends were helping them move in expectation of payment.

The panel finds that there is now sufficient information to determine if the appellant has resources available to cover the moving costs. The panel finds that the appellant did not have those resources available, other than the cost of food that the appellant paid directly at the time of the move.

Prior Approval:

Under section 55(3) and (3.1) of the EAPWDR, a person is eligible for a supplement for storage fees only if they get approval from the ministry before incurring those costs, unless the minister is satisfied that there are exceptional circumstances. In its reconsideration decision, the ministry said that the appellant had not shown that they did not have an opportunity to ask for approval before they moved.

The appellant gave several reasons for not asking for ministry approval of moving costs before they moved: they said that they were suffering the effects of a fall on the stairs, they were sick, the weather was cold, and they had to make the move in a hurry to be sure that they would get the suite. The panel notes that the appellant fell on February 8, but the suite was offered to them on February 1 and they moved their possessions over a 3 week period between February 8 and 28. The appellant also said that they did not know that they needed to have approval of moving costs before they moved, and the panel finds that was the main reason they did not submit their request for the supplement until March 10, 2022.

If the appellant did not have prior approval, under the legislation, the ministry cannot provide the supplement unless the ministry is satisfied that there were exceptional circumstances that excused the failure to get prior approval. The panel finds that, if the appellant had known they needed prior approval, the circumstances the appellant describes would not have prevented them from sending the request to the ministry before they moved. The panel finds that the ministry was reasonable in its determination that the circumstances were not exceptional.

Least Expensive Appropriate Moving Costs and Other Costs Incurred:

Under section 55(4) of the EAPWDR, the ministry may only provide a supplement for “the least expensive appropriate moving costs.” Section 55(1) defines “moving cost” as “the cost of moving a family unit and the family unit’s personal effects from one place to another.”

The ministry maintained that the appellant should have obtained estimates from more than one source so that the ministry could determine whether the costs the appellant incurred were the least expensive appropriate moving costs. The ministry also determined that cleaning costs were not “moving costs” as defined in section 55(1) of the EAPWDR.

The appellant made a rough calculation of the number of hours the people worked and used a rate of \$10 per hour to arrive at the amount they agreed to pay. The panel notes that the hourly rate is about 2/3 of the minimum wage of \$15.20 in effect in February 2022. They had about 105 hours of help to move, at \$10 per hour. They estimated that, of that amount, about \$150, or 15 hours, was for cleaning, and the rest was for moving their possessions from the 3rd floor suite to suite #1 on the main floor.

The panel finds that the ministry was reasonable in determining that the amounts the appellant listed for cleaning and supplies are not “moving costs” as defined by the legislation.

The panel finds that the hourly rate the appellant agreed to pay for people to move their possessions was reasonable. Given the low hourly rate, it would also be reasonable for the appellant to provide some food for the movers, but it appears that the appellant had the resources to pay for the food, as they paid for it at the time. However, there is not enough information for the panel, or the ministry, to determine if the total cost of \$900 (exclusive of cleaning) was reasonable for moving the contents of a 2 bedroom suite from the 3rd floor to the main floor. The ministry stated that it usually asks for 2 estimates from movers when a recipient asks for pre-approval of moving costs. Where the appellant was paying family and friends for the move, it would have been helpful to have at least one estimate from a commercial mover for comparison. Therefore, the panel finds that the ministry was reasonable in deciding that it was unable to determine if the appellant’s costs were the least expensive appropriate moving costs.

Conclusion:

The panel finds that the ministry’s decision to deny the appellant’s request for a supplement for moving costs was a reasonable application of the legislation in the appellant’s circumstances. While the appellant established that they did not have resources available to cover the moving costs, except for the food for workers, the ministry was reasonable in determining that:

- the appellant was not moving for a reason listed in Section 55 of the EAPWDR;
- the appellant did not have approval from the minister before incurring the costs;
- there were no exceptional circumstances to excuse the appellant from getting prior approval;
- there was not enough information to show that the costs were the least expensive appropriate moving costs; and
- cleaning expenses were not eligible moving costs.

The appellant is not successful in the appeal.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Act

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

Employment and Assistance for Persons with Disabilities Regulation

Supplements for moving, transportation and living costs

55 (1) In this section:

"living cost" means the cost of accommodation and meals;

"moving cost" means the cost of

(a) moving a family unit and the family unit's personal effects from one place to another, and

(b) storing the family unit's personal effects while the family unit is moving if the minister is satisfied that storing the personal effects is necessary to preserve the personal effects;

"transportation cost" means the cost of travelling from one place to another.

(2) Subject to subsections (3) and (4), the minister may provide a supplement to or for a family unit that is eligible for disability assistance or hardship assistance to assist with one or more of the following:

(a) moving costs required to move anywhere in Canada, if a recipient in the family unit is not working but has arranged confirmed employment that would significantly promote the financial independence of the family unit and the recipient is required to move to begin that employment;

(b) moving costs required to move to another province or country, if the family unit is required to move to improve its living circumstances;

(c) moving costs required to move anywhere in British Columbia because the family unit is being compelled to vacate the family unit's rented residential accommodation for any reason, including the following:

- (i) the accommodation is being sold;
- (ii) the accommodation is being demolished;
- (iii) the accommodation has been condemned;
- (d) moving costs required to move anywhere in British Columbia if the family unit's shelter costs would be significantly reduced as a result of the move;
- (e) moving costs required to move anywhere in British Columbia to avoid an imminent threat to the physical safety of any person in the family unit;
- (f) transportation costs and living costs required to attend a hearing relating to a child protection proceeding under the *Child, Family and Community Service Act*, if a recipient is given notice of the hearing and is a party to the proceeding;
- (g) transportation costs, living costs, child care costs and fees resulting from
 - (i) the required attendance of a recipient in the family unit at a hearing, or
 - (ii) other requirements a recipient in the family unit must fulfilin connection with the exercise of a maintenance right assigned to the minister under section 17 [*assignment of maintenance rights*].
- (3) A family unit is eligible for a supplement under this section only if
 - (a) there are no resources available to the family unit to cover the costs for which the supplement may be provided, and
 - (b) subject to subsection (3.1), a recipient in the family unit receives the minister's approval before incurring those costs.
- (3.1) A supplement may be provided even if the family unit did not receive the minister's approval before incurring the costs if the minister is satisfied that exceptional circumstances exist.
- (4) A supplement may be provided under this section only to assist with
 - (a) in the case of a supplement under subsection (2) (a) to (e), the least expensive appropriate moving costs, and
 - (b) in the case of a supplement under subsection (2) (f) or (g), the least expensive appropriate transportation costs and the least expensive appropriate living costs.

Part G – Order

The panel decision is: (Check one) Unanimous By Majority

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

Legislative Authority for the Decision:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name

Susan Ferguson

Signature of Chair

Date (Year/Month/Day)

2022/07/07

Print Name

Sarah Bijl

Signature of Member

Date (Year/Month/Day)

2022/07/04

Print Name

Joseph Rodgers

Signature of Member

Date (Year/Month/Day)

2022/07/04